IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4296 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ HUSENBHAI SANDHI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DATTA with MR AR SHAIKH for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: /10/2001

C.A.V. JUDGEMENT

1. Firoz Husenbhai Sandhi, petitioner - original detenu has filed this petition praying for writ of habeas corpus and any other appropriate writ, order or direction quashing and and setting aside the detention order No.PCB/DTN/PASA/18/2001 dated 22.3.2001 passed by the Police Commissioner, Rajkot City, Rajkot, which is produced at Annexure `A' to the petition. By the said order the detaining authority has placed the petitioner

under prevention of detention in purported exercise of powers under the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `PASA' Act). By way of amendment petitioner has also challenged the action of the Government in which he challenged the communication dated 20th June, 2001, (Annexure `F') by which representation dated 8.6.2001 rejected by the Government on the ground that there is a delay of 18 days in communication.

2. It has been stated in the petition that the Police Commissioner, Rajkot City, Rajkot - respondent No.2 herein under the provisions of PASA Act passed an order dated 22.3.2001 in purported exercise of the power under sub-section (1) of Sec.3 of the PASA Act detaining the petitioner as dangerous person under sec.2(c) of PASA Act.

2.1 The detaining authority has served the order of detention to the petitioner and accordingly the petitioner has been detained in Central Jail, Sabarmati, Ahmedabad. The detaining authority has also furnished the grounds of detention dated 22.3.2001 alongwith the documents which have been supplied to the detenu. The same has been produced at Annexure `B' to the petition.

2.2 Being aggrieved and dissatisfied with the said action of the authority, petitioner filed the present petition before this Court on 18th June, 2001, and this Court (Coram: H.K.Rathod, J.) by his order dated 20.6.2001 pleased to admit the matter and made rule returnable on 13.8.2001.

2.3 It may also be stated that during the pendency of the petition, the petitioner's learned advocate has made representation dated 8.6.2001 to the detaining authority. He has also stated that the statements of all witnesses recorded under Sec.161 of the Criminal Procedure Code and in fact the petitioner though demanded but the authority has not supplied the documents to the petitioner. He submitted that said representation is considered on 13.6.2001 and the same was communicated to the petitioner on 16.6.2001. The petitioner has also challenged the said action of the authority on the ground that there is a delay in disposal of his representation in this behalf.

3. Ms.Banna Datta, learned advocate appearing on behalf of the petitioner has made following submissions:

(1) The detention of the petitioner is in violation of Constitutional guarantees enshrined

under the Constitution of India more particularly in violation of Articles 21 and 22 of the Constitution of India.

(2) It has been submitted that the grounds of detention is passed without having any regard for the provisions of the PASA ACt.

(3) It has also been submitted that the detaining authority has placed reliance on the statements of two secret witnesses recorded by police on 16.3.2001 wherein unregistered offences dated 10.1.2001 and 22.11.2000 respectively have been stated. The order of detention is passed on 22.3.2001 and thus there has been delay of 2 months and 12 days in passing detention order.

(4) It has been further submitted that the detaining authority has passed the order on the ground that the detenu is a dangerous person and his activities as dangerous person have effected adversely the maintenance of public order. However, on the bare perusal of the material produced alongwith the detention order, it cannot be said that the activities of the detenu have affected adversely the maintenance of public order.

(5) It has also been further submitted that the principal conditions for passing the order of detention is that the detaining authority should arrive at subjective satisfaction on the basis of materials placed before him that the detention of a particular, individual was necessary under the relevant provisions of law. The requisite satisfaction of the detaining authority should proceed the detention order. Therefore the fact of arriving at the requisite satisfaction should be reflected on the file and that too before the order of detention is passed. If this satisfaction was not arrived at prior to the passing of the order of detention, the order of detention cannot be sustained.

(6) It has been further submitted that in his case the satisfaction was not arrived at prior to the passing of the order of impugned order of detention and therefore it cannot be sustained and it be quashed and set aside.

3.1 Learned advocate for the petitioner has also

relied upon the judgment of the Hon'ble Supreme Court in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported in AIR 2000 SC 3675. In para 4 on page 3676 after relying upon the earlier judgment in Rivadeneyta Ricardo Agustin v. Govt. of the National Capital Territory of Delhi, 1994 Supp (1) SCC 597 and also in the case of Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416, the Hon'ble Supreme Court has held as under:

"This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

4. Ms.Nandini Joshi, learned AGP for the State has tried to support the order of the authority in this behalf. She has also read out the grounds of detention. She has further stated that there are six incidents on which the authority have relied upon and these are the relevant factors for detaining the petitioner in this behalf.

5. Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of Bai Amina Vs. State of Gujarat reported in 22 GLR 1186 and also in the case of Kajolben G.Sindhi vs. State of Gujarat reported in 2000(1) GLH 320.

6. In view of the aforesaid catena of decisions, in my view, I do not feel inclined to record my concurrence with the order of detention passed in the matter. In view of the same, the petition is allowed. The order of detention dated 22.3.2001 passed by the respondent no.2 Police Commissioner, Rajkot City, Rajkot, is hereby quashed and set aside. The detenu Firoz Husenbhai Sandhi is ordered to be released forthwith, if he is not required in any other criminal case or any other proceeding. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

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